

SPECIAL COUNCIL MEETING

FEBRUARY 3, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Vice Chair Mason K. Chock, Sr. at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Monday, February 3, 2014 at 2:08 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Mel Rapozo (*present at 2:14 p.m.*)
Honorable JoAnn A. Yukimura (*present at 2:14 p.m.*)

Recused: Honorable Jay Furfaro

Mr. Watanabe: Councilmember Rapozo, Councilmember Yukimura, and Chair Furfaro will be here shortly. They are in the building.

Vice Chair Chock: Thank you.

Mr. Watanabe: So, we have four (4) present.

Vice Chair Chock: Four (4) present. I think what we want to do since we will be expecting our other Councilmembers shortly, is to move forward with the approval of the agenda. Can I have a motion to approve?

APPROVAL OF AGENDA.

Mr. Bynum moved for approval of the agenda as circulated, seconded by Mr. Kagawa, and carried by a vote of 4:2:1 (*Councilmember Rapozo and Councilmember Yukimura were not present; Council Chair Furfaro was recused*).

Vice Chair Chock: If we could move towards public comment as well and start that.

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Mr. Watanabe: Vice Chair, we do not have anyone who signed up for public comment.

Vice Chair Chock: Thank you, Mr. Clerk. Anyone in the public would like to provide public comment at this time? None? Are you sure? No one?

Mr. Bynum: They will wait for the agenda item.

Vice Chair Chock: Mr. Clerk, can we move on to the next item?

Mr. Watanabe: Yes. Right now we do not have a County Attorney, so I will read the agenda item.

Vice Chair Chock: Okay.

EXECUTIVE SESSION:

ES-699 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the County Council, to allow Counsel the opportunity to provide the Council with briefings regarding Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-1-0340 (Fifth Circuit Court), and to obtain settlement authority and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Mr. Watanabe: Vice Chair, we have three (3) people who signed up to speak on this agenda item.

Vice Chair Chock: Thank you, Mr. Clerk. The County Attorney is not present, but we will move forward with public testimony at this time.

Mr. Watanabe: The first speaker is Glenn Mickens, followed by Ken Taylor.

Vice Chair Chock: Good afternoon, Mr. Mickens.

GLENN MICKENS: Good afternoon, Mr. Chock. Are the other members going to be here shortly?

Vice Chair Chock: Sure. My understanding is yes, they are.

Mr. Watanabe: Yes, they are. They are in the building.

Mr. Mickens: Is there any way that we can wait until all members are present until we testify?

Vice Chair Chock: We can move that far. Maybe we will call a recess? This is as far as we can go until all members are present.

Mr. Mickens: Just until they get here.

Mr. Watanabe: If any of the other speakers want to wait also, we have Mr. Ken Taylor and Mr. Joe Rosa.

Vice Chair Chock: Would anyone else like to speak now or wait until the other two (2) Councilmembers are present?

Vice Chair Chock: Thank you.

Mr. Kagawa: Chair.

Vice Chair Chock: Mr. Kagawa.

Mr. Kagawa: We need five (5) votes to go into Executive Session. My suggestion is as soon as one (1) more member comes up, we will go with the public testimony because it is not our process to wait for whoever Ken or Glenn wants present for us to determine when to start a meeting or continue a meeting. So, if we have those five (5) members, I would say let us go on with it and let us take the vote and go into Executive Session.

Vice Chair Chock: I am confident that we will have two (2) members present because they are both in the building. So, we will call a recess at this time, Mr. Clerk, and come back for public testimony. Thank you.

Mr. Watanabe: So noted.

There being no objections, the Council recessed at 2:13 p.m.

There being no objections, the meeting was called back to order at 2:14 p.m., and proceeded as follows:

Vice Chair Chock: For the record, Chair Furfaro has recused himself from this session and we are currently taking public testimony. Mr. Clerk.

There being no objections, the rules were suspended to take public testimony.

Mr. Watanabe: First speaker is Glenn Mickens, followed by Ken Taylor.

Mr. Mickens: Thank you, Vice Chair for your consideration. For the record, Glenn Mickens. You have a copy of my testimony. Let me read it for the viewing public. I find it shocking that this conspiracy to get rid of our County Auditor, Ernie Pasion, calls for twenty-three (23) Executive Sessions to somehow justify the actions to dismiss him. We have heard that those proponents of removing him from office cannot voice their side of the controversial issue because of some reason only known to them. If, in fact, they do have just cause for his dismissal and certainly they would have given this information to the people or the press, but the Auditor's supporters have heard absolutely no reason for this harsh action against him nor do any facts point to anything except positives for the work he has done. Certainly at the Association of Local Government Auditors who recently gave Mr. Pasion superior marks for his leadership and job performance, would have uncovered whatever irregularities or wrongdoing he might have done if, in fact, wrongdoing happened serious enough for his dismissal. If this is no more than a witch-hunt or conspiracy, then why twenty-three (23) Executive Sessions? The latest one not to obtain settlement authority from what it says on the agenda. To me, "settlement" means that the accusers want to cut their losses since they cannot win their case and wish the whole issue to end. The Mayor and certainly members of this Council have tried to destroy this honest and dedicated man and in my opinion, they will pay dearly come election time. As I said in my last testimony, when an employee does his job and discloses irregularity and possible criminal acts, it is reprehensible for those involved in the wrongdoing to

become engaged in retaliatory methods to avenge these deeds. I just hope these words are taken into consideration. That is all. I know you have your views on this thing, but again, I think the public should somehow know what this man is being charged with. Maybe there is an Executive Session and we cannot know what is going on in the Executive Session. We are not asking for that. We are not asking for knowing what is going on in there. We cannot do that obviously, but certainly, the news media or somebody can come out and say what the charges are against this person. Anyway, I hope you take these things all into consideration. Thank you.

Mr. Watanabe:
Rosa.

Next speaker is Ken Taylor, followed by Joe

KEN TAYLOR: Chair, members of the Council, my name is Ken Taylor. At the last Executive Session, I raised some issues based on the lawsuit that you are talking about today and for this session, I turned in our second letter that was dated January 28, 2014. Since then, a number of things have happened and I am somewhat concerned about some of it. I think you have been kept in the loop as to response from our letter from Al referencing the County Attorney, in reference to our January 28th letter. I think I also sent you our response to that letter, but I would just like to first and foremost say that it is obvious that there is no case law to support their response and not only does he used word "arguably," but after weeks of waiting for response, no legal support for their position is provided. Second, is the appropriate response not that he will request a Special Counsel to research the matter because he, in fact, was the attorney that gave the advice to the Mayor? Hardly an unbiased opinion when he is providing a review of his own action. Interesting that he states that he advised Steve Hunt to take no action in reference to our letter of the 28th, but there is no mention that he advised the Auditor to take no action or for you folks not to take any action. I find this really disturbing, and then over the weekend comes what I feel is a really sleazy, slimy press release from the Mayor, and he dances around all of the issues except what we have raised in our letters, our letters are based on information in the lawsuit that you are talking about resolving. He talks about the same allegations that were brought up two (2) years ago. Well...

Mr. Watanabe: Three (3) minutes.

Vice Chair Chock: Three (3) minutes, Mr. Taylor.

Mr. Taylor: What was raised was in reference to criminal intent. We have not addressed any criminal intent whatsoever in the letter other than did he or did he not break the law in reference to Hawai'i Revised Statutes (HRS) 78-9? As nitpickers and government watchdogs, Glenn and I have no political motive whatsoever in this action that we have taken.

Vice Chair Chock: Thank you, Mr. Taylor. Can you please wrap it up?

Mr. Taylor: We have only raised the issue of HRS 78-9 and the question in my mind, is very simple. Did the Mayor and an unnamed employee take the Fifth or did they not? If they did not, HRS 78-9 does not apply. If they did, HRS 78-9 through HRS 78-11 does apply and it is spelled out pretty clearly, the process which has to move forward. I believe that part of all of this falls on your shoulders to make sure that the law is passed, followed, and that

everything moves accordingly so that the people of Kaua'i are well represented by you. If you do not follow-up and move forward with this, then you become part of the problem and I do not think that is a necessity that you want to move into. Hopefully, you will see fit because what is going to happen? You are going to end up costing the County taxpayers lots and lots of money because of what has gone on and twenty-two (22) plus closed sessions on this item is absolutely ridiculous. As Glenn said, you have never taken the time to even tell us, the community, what the charges are and that is wrong. Thank you.

Vice Chair Chock:

Thank you.

Mr. Watanabe:

Next speaker is Joe Rosa.

JOE ROSA:

Good afternoon, members of the Council. Again, another Executive Session and according to the count, this is going to be the twenty-third (23rd) Executive Session. I served on the Federal court in Honolulu and it seems like this is a hung jury. After twenty-two (22) sessions you cannot reach a decision to find a guilt on the Auditor's Office, something is wrong. You people have to decide already for the amount of meetings you had, whether the man is at fault in operating his Department? With seven (7) audits that are out already that the public could look into it and the Administration correct it because the Auditors that were here recently said that none of those things have been corrected. The issue of the gas cards are still on the record by the Auditors. It was mentioned again. Something is wrong because that was one of the audits that came out in the paper that the public was made known and aware of. So, what has been done? The Administration from the top has not done anything to correct those wrongs that were exposed in those audits. It is high time that after twenty-two (22) sessions, you can find anything of a just cause in the operation of the Auditor and his office. This thing should be just wiped off the books and wiped off his record because you even suspended him one (1) week with pay, but what cause? There is no cause again. A lot of it from witnessing and hearing this testimony has been personalities from top down to the staff and Administration. You people, as members of the Council, who elected Mr. Pasion in 2009 after the election went through the whole list of people applying for the job and of all of those, he was selected. Then when those two (2) articles came out on these audits, the Kilauea Gym was number one and then the gas card thing, it started to ruffle, rock the boat, and rock some peoples' feathers. So, that is when things started to come out and then when there was sort of a whistle-blower who resigned from the Auditor's Office...

Mr. Watanabe:

Three (3) minutes.

Mr. Rosa:

...the upper half and the Council probably seen that was something to get at the Auditor.

Vice Chair Chock:
Thank you.

Mr. Rosa, can you summarize for us please?

Mr. Rosa: Anyway, I will wrap it up within the next three (3) minutes again. The thing is that as I said, enough is enough. You cannot prove a just cause on doing of his work, what else? What lingers? What is in the closet that we do not know, that the public does not know? From reading those audits, I do not think that there is anything wrong, but he has exposed all of the wrongs in the system. So, when there are wrongs, you correct the wrongs. It is enough. Twenty-two (22) going on twenty-three (23), man, come on. In the court of

law, when you are in a hung jury, it end if the person cannot be proven guilty and he is acquitted and walks free. You are in the same boat. After all of these, I think with nothing to expose in the operation of the Auditor's Office and to the job that he has done so far, what is there that has been hidden from the public other than those two (2) that came out in the Garden Island? Those are all public documents because it was approved, it was printed, it was binded together into seven (7) audits, and it should be made known to the public. So, get it over with and go on ahead and correct all the wrongs that were uncovered so far. Thank you.

Vice Chair Chock:
Mr. Rosa? Go ahead.

Thank you. You have a question for

Ms. Yukimura: Mr. Rosa, I have a question. You mentioned that Mr. Pasion was suspended by the Council.

Mr. Rosa: He had a one (1) week suspension with pay.
It came out in the paper.

Ms. Yukimura: Oh, is that where you found out?

Mr. Rosa: Yes.

Ms. Yukimura: Okay, and do you know how the paper found out?

Mr. Rosa: What is that?

Ms. Yukimura: Do you know how the paper found this out?

Mr. Rosa: Well, I do not know.

Ms. Yukimura: Oh, okay. Thank you.

Mr. Rosa: But if it is in the paper, it is in the paper.

Ms. Yukimura: That is true. Thank you.

Vice Chair Chock: Thank you, Mr. Rosa. Any further public testimony at this time?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Vice Chair Chock: Any questions or discussion here?
Councilmember Hooser, please first, and followed by Councilmember Yukimura.

Mr. Hooser: Thank you, Vice Chair. I think the issue of the Mayor complying or not complying with the law under the circumstances that have been described, I do not see that as directly relating to our Executive Session today, but I would like that on a future agenda. I think we need to be briefed by the County Attorney whether an Executive Session or open session or whatever is appropriate. It was in the newspaper yesterday and there were letters flying around and allegations. It appears fairly serious and I think we should have that discussion, but at the appropriate time. Thank you.

Vice Chair Chock: (Inaudible.) Thank you. Councilmember Yukimura.

Ms. Yukimura: Thank you. I just want to say for the record, there were several testimonies about how the Council should inform the public of any charges, if any, that have been made. If there are any charges it can only be released with Mr. Pasion's permission. So, instead of haranguing the Council to please go to Mr. Pasion and get his written permission to release the charges, if any.

Vice Chair Chock: Thank you. Councilmember Kagawa.

Mr. Kagawa: Thank you, Chair. I know you folks do not like the repetitiveness of having these Executive Sessions and I do not like to repeat myself either. I told you folks at the last meeting there is nobody else on the Council that wants to tell you folks what questions you are asking, wants to answer those questions more than me, but unfortunately, we have a County Attorney here who is ready to stop me now. When given the chance – I do not need to see that. Put it down, please. Show me courtesy and I will show you courtesy, Ken. Basically, I wish I could clarify some of those comments that you folks are making because they are way off base, way off. Maybe if you are not satisfied with the job we are doing, you folks can jump in the race. Last election there were only nine (9) candidates. Come on in man. We need more candidates. Thank you.

Vice Chair Chock: Thank you. Any other discussion Councilmembers? If not, the only thing I would like to say is, I long for the day where we can be more transparent, but when we get to a point where we go into litigation, this is where the doors get closed. As much as possible, not only here, but everywhere on this island we have to start to work towards some resolution before these kind of things occur. With that, I would like to ask for a motion to move into Executive Session.

Ms. Yukimura: Did the County Attornye...

Mr. Watanabe: We read the agenda item already, Vice Chair.

Vice Chair Chock: Oh, that is right.

Mr. Watanabe: The agenda item was read.

Vice Chair Chock: That is right. Sorry.

Ms. Yukimura moved to convene in Executive Session for ES-699, seconded by Mr. Rapozo, and carried by the following vote:

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| FOR EXECUTIVE SESSION: | Bynum, Chock, Hooser, | |
| | Kagawa, Rapozo, Yukimura | TOTAL – 6, |
| AGAINST EXECUTIVE SESSION: | None | TOTAL – 0, |
| EXCUSED & NOT VOTING: | None | TOTAL – 0, |
| RECUSED & NOT VOTING: | Furfaro | TOTAL – 1. |

Mr. Watanabe: Six (6) ayes.

Vice Chair Chock: Motion passes. We will recess and move to Executive Session in three (3) minutes.

There being no objections, the Council recessed at 2:33 p.m. to convene in Executive Session.

ADJOURNMENT.

There being no further business, the Special Council Meeting adjourned at 5:05 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

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